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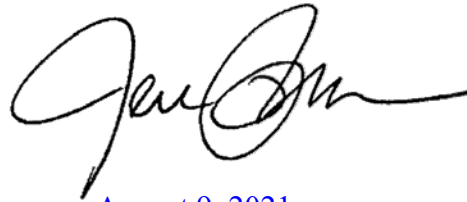
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The motion to seal is GRANTED temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motion. The Clerk of Court is directed to terminate ECF No. 699.

VIA ECF

August 6, 2021

SO ORDERED.



August 9, 2021

The Hon. Jesse Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

RE: City of Providence, Rhode Island et al. v. BATS Global Markets, Inc., et al., No. 14-cv-2811 (JMF) (S.D.N.Y.)

Dear Judge Furman:

We represent non-party BofA Securities, Inc. (“BofA”) in connection with a Subpoena to Produce Documents, Information or Objects or to Permit Inspection of Premises in a Civil Action dated January 10, 2020 (the “Subpoena”) issued by defendants The Nasdaq Stock Market LLC and Nasdaq OMX BX, Inc. (together, “Nasdaq”) in the above-captioned action. On July 27 and July 29, 2021, Nasdaq notified undersigned counsel that, as part of Defendants’ Opposition to Plaintiffs’ Motion for Class Certification (Dkt. No. 650), Nasdaq filed, under seal, certain documents and information that BofA produced in response to the Subpoena and that were designated “Confidential” under the Stipulated Protective Order (Dkt. No. 402). Pursuant to Rule 7.C of Your Honor’s Individual Rules and Practices in Civil Cases, and in accordance with the Court’s order granting certain non-parties including BofA an extension of time to respond (Dkt. No. 675), non-party BofA respectfully requests that certain portions of Exhibit 5 to the Declaration of Elisha Barron (Dkt. No. 644, and Exhibit 5, the “Declaration”) containing personal and/or proprietary information pertaining to BofA, be redacted and that all references to those in publicly filed submissions also be redacted.¹ The proposed redactions, which are narrowly tailored to protect BofA’s privacy interests, is enclosed with this letter.

The Declaration was produced as part of BofA’s response to the Subpoena. Because the Declaration contains information regarding BofA’s internal and proprietary data systems and personally identifying information of a BofA employee, BofA designated the Declaration

¹ Nasdaq informed the undersigned regarding another document pertaining to BofA that was filed under seal. See Exhibit 39 to the Declaration of Elisha Barron (Dkt. No. 644), document bearing production Bates Nasdaq-WELLS_CAPITAL-00000373. BofA does not request that this document remain under seal.

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August 6, 2021

“Confidential” under the Protective Order. Specifically, the Declaration contains (i) proprietary information regarding BofA’s internal order and execution systems including how trading records are maintained and queried (Ex. 5, ¶ 5); (ii) a description of the steps taken by BofA to identify information in response to the subpoena (*id.* ¶ 8); and (iii) personal identifying information of a BofA employee (*id.* ¶ 1).

In evaluating whether information should remain under seal, a court must balance the presumption of public access to judicial documents against competing factors, such as the privacy interests of those resisting disclosure. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). This balancing test weighs heavily in favor of granting protection over the information requested by BofA.

There are significant privacy interests in the personal and proprietary systems information for which BofA seeks redactions here, and courts have held that such information warrants protection from public disclosure, even when they are produced by parties to the action. *See, e.g., T-Jat Sys. 2006 Ltd. v. Amdocs Software Sys. Ltd.*, No. 13-CV-5356 JMF, 2015 WL 394075, at *6 (S.D.N.Y. Jan. 29, 2015) (Furman, J.) (permitting proposed redactions of information related to a party’s systems and other technical information); *Girl Scouts of United States of Am. v. Boy Scouts of Am.*, No. 18-CV-10287, 2021 WL 76293, at *2 (S.D.N.Y. Jan. 8, 2021) (granting “motions to seal documents that ‘contain proprietary, competitively sensitive business information or are related to internal procedures, the disclosure of which would put [the moving party] at a competitive disadvantage’” and allowing defendants to redact personally identifiable information of non-parties).

Moreover, when the information pertains to non-parties to the action, courts have recognized that “[t]he privacy interests of innocent third parties . . . weigh heavily in a court’s balancing equation.” *U.S. v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (citations omitted); *Royal Park Invs. SA/NV v. Deutsche Bank Nat’l Tr. Co.*, No. 14-CV-4394 (AJN), 2018 WL 1750595, at *21 (S.D.N.Y. Apr. 11, 2018) (holding “confidential information . . . involving non-parties is sufficiently sensitive to merit protection” at the class certification stage).

By contrast, the public interest in having access to information regarding a non-party’s personnel and internal systems is minimal, the details of which have no bearing to the claims or defenses in this action. These countervailing factors thus outweigh the public interest in disclosure. *See generally Lugosch*, 435 F.3d at 119–20 (the right of public access to judicial documents is not absolute and “the court must balance competing considerations against it”).

For these reasons, BofA respectfully requests that the personal identifying information of a BofA employee as well as certain information contained in paragraphs 1, 5 and 8 of the Declaration be redacted as proposed in the enclosed document, and that all references to those paragraphs in publicly filed papers be redacted.

August 6, 2021

Respectfully submitted,

/s/ Daniel Lewis

Attorney for non-party BofA Securities, Inc.

Enclosure

cc: All Counsel of Record (via ECF)